

THE
METHOD
Of the Proceedings

In the HOUSE of
England
Lords and Commons,

In CASES of
Impeachments for HIGH TREASON,

WITH
PRESIDENTS Ancient and Modern;
and the Judgment of our best Lawyers,
and Historians.

The Third Edition.

To which is prefix'd,
A SPEECH upon the Impeachment of
Robert Earl of Oxford, and the Na-
ture of his Crimes.

LONDON, Printed for James Roberts at the
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Lords and Commons



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A PREFACE upon the Improvement of
Robert Earl of Oxford, and the
rest of his Country.

Printed for James Roberts in the
City of London, in the Strand, near the
Royal Exchange, 1715. (G. 1.)



A *SPEECH* upon the *Impeachment* of
Robert Earl of Oxford, and the Na-
ture of his Crimes.



THE Case before us is of
the first Importance; the
Expectation of the World
is raised to the highest
Pitch, and every Assem-
bly is looking upon ours
either with Fear or Hope, as they may be
affected by our Conduct in the present
Juncture.

For my part I don't enter into this Dis-
course with any View of satisfying private
Resentment, or Interest, but as it con-
cerns the Good and Safety of the Nation
in general, as it preserves Law, Justice,
and Religion at Home, and publick Faith,
and the Honour of the Nation Abroad.

As to the particular Case of the Noble
Person now Impeach'd, I think we ought
not to have the least Scruple of going up-

on the Foot of *High Treason*. For let us only first consider what has been done during the Translations of his Ministry, and of which he must necessarily been either the Director or Conductor. For it is a mere Jest to suppose one of the first Ministers of State unacquainted with the Measures of his Fellow-Administrators, or that he would sit patiently, and suffer things of the greatest Moment to be Conducted by Inferior Officers without his Knowledge or Concurrence.

We have then plainly seen a *Treaty* of Peace set on Foot directly contrary to the Articles of the grand Alliance, a separate Treaty without any previous Intimation of it to our Allies, for them to discover upon what Foundation we went: It signifies nothing to say, that they were invited and exhorted to Concur with us, the very first Step being Wrong and Injurious to them, and as for our Invitations, they were to no purpose, 'till we had revealed our Measures, which it has been proved our Enemies knew, and which were industriously concealed from our Friends: The very Advice it self to break a fundamental Article of the Alliance,

Alliance, is a Diminution of the Dignity and Honour of the Crown, and there can be no Reason why one Man who invades the Prerogative with open *Arms* should be thought Guilty of *High Treason*, and he who does the same to all Effects and Purposes without *Arms* should only be Guilty of a Misdemeanor. I would fain know if the End and Design is not answered as well by the one as the other, and if the Consequences are not equally Dangerous, and I think the difference of the manner in doing the same thing, or promoting the same dishonourable End, cannot alter the Nature of the Crime.

If it be objected that our Laws and Statutes are deficient, and have not apparently and *totidem verbis* declared the present Case to be *High Treason*, we are to consider that does not prove it is not so. For sure there is a Power of Interpretation left in the Masters of those Laws, and tho' it may seem hard to take away a Man's Life by such Interpretations, yet surely they can least complain of that Treatment, who have construed away the same and positive Words of the Treaty of the *Grand Alliance*.

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In short, no Man can say it is possible for the Composers of any Laws, with all their Caution and Foresight, to make the Words particularize every Case that may happen; the very Notion of it is absurd and ridiculous, as supposing *Perfection* in human Knowledge, which is impossible. But then the Power which makes these Laws may explain them, nay it does every Day in the minutest and most trifling Cases, and it is always reckoned sufficient to condemn the accused Person, if his Crime comes within the general and plain Sense of the Legislature. This Liberty is necessary to be taken at some times, and for this Reason, that it brings fewer ill Consequences than a strict Adherence to the Letter would, and at the same times prevents the unnecessary Multiplication of Laws, which while they seem intended for more clearness, often breed greater Confusion.

If then the Case of this Noble *Person* seems not directly to fall within the Statute, I can see no Hardship in bringing it to the Test, and stretching our Power a little against the Perverter and Abuser of all Power. Such a Conduct as this in my
 Opinion

Opinion might be justified, but I believe that it is not the present Case, there is Law enough, plain and positive, which I question not will be urged against him, and that we need not have recourse to any new Practice. To betray the Honour of the Crown, or direct its Power to evil Purposes and so make it the Instrument of destroying it self, may have been called by softer Terms formerly, or perhaps not have had any Name, but surely it deserves that of Treason. If the whole Tendency of the late Treaty of Peace appears to be of this kind, we can have no Scruple of giving that Name, unless we are so over-nice as that when we are convinced of the Fact, we shall stick like a parcel of Grammarians at a Name, which is a Character that I am sure does by no means become the Dignity of this House.

But I am sensible that it has been said, that tho' the Treason so apparent, yet there may be Proofs wanting, and therefore it would reflect upon the Accusers to bring up a Charge that they could not maintain, and make the Noble Persons who are his Judges

Judges think the Worse of the whole Accusation.

I say the Report sufficiently shows this Noble Person was concerned in the Transactions which are most Criminal, and tho' we may have acted by a Deputy in some Parts of it where his Fears got the better of his Pride, yet there remains Evidence enough to support the Charge. It will not be sufficient to say, That he did not advise these Matters, for we know his Duty obliged him to remonstrate against them, and prevent them, and I will defy him to bring any one Proof of that thro' the whole Course of his Administration.

In short, I am so far convinced that the Charge of High Treason may be maintain'd against this Noble Person, that I shall not believe the contrary, 'till it is proved that he was not *Privy Councillor* and *Lord High Treasurer*, during the space of this inglorious, pernicious, and execrable Treaty of Peace.

The Charge that they could not maintain, and make the Noble Persons who are his Judges



The Method of the Proceedings in the House of LORDS and COMMONS, &c.



HE Manner and Method of *Impeachments* being a Subject of Importance and Consequence, may at this critical Juncture deserve a strict Enquiry into; and the latest *Precedents* being those which are reckoned as a Rule or Standard for Proceedings of the same kind are the most proper to be recited, and set in a due Light. I have therefore thought a few Hours not ill employed in collecting some Instances of this Nature from our Historians and Journalists, leaving them without any other Reflections, then what they themselves thought fit to make upon the Occasion.

The Privilege, or Power, lodged in the *House of Commons* to impeach upon Cases of *High Treason* and *Misdemeanours* is of great Antiquity, and is a Right that they have frequently exercised to the great Advantage of
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their Country. Some of our *Kings* have Thought this Power a very hard restraint upon the *Crown*, and gave all manner of Discountenance to it both by their private Judgment and publick Authority, but it was ever esteemed too valuable a Branch of the *Liberties of the People* ever to be given by the Guardians of their Rights, and so has been maintained with many notable Struggles in the last *Century*. Many evil Effects indeed may flow from a Noble Cause, but that must be the Fault of the Conducters and Managers of publick Affairs, and is not to be charged upon the Cause itself.

But it is our Business to trace things as they happened, and gave as compleat a View of them as Possible, and we shall in this Search go no higher than the Reign of King *Charles I.* when *Impeachments* were common, and almost fashionable.

The Case of the Earl of *Strafford* being as noted a one as any, and laying in many bulky Volumes, we shall try to contract the Substance of it to a narrow Compass, with a strict regard to the *Forms* used in that *Impeachment*, that being the Design the Writer has most in view, and most instructive to the Reader.

This Memorable Tryal lasted above the space of a Year, for it began the Twenty Second of *March* One Thousand Six Hundred and Forty, and continued with the interposition of divers Intervals for deliberation and providing Evidence, until the Twelfth of *April* One Thousand Six Hundred and Forty One.

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The Preparatory Matter to the Impeachment was a *Committee* for the *Irish* Affairs, and then the *House* appointed Seven of their Members, Mr. *Pym*, Mr. *Stroud*, Mr. *St. John*, Lord *Digby*, Sir *John Clotworthy*, Sir *Walter Earl*, and Mr. *Hampden*, to prepare Matter of Conference with the Lords, and a Charge against the Earl of *Strafford*; the *Committee* soon returned, and upon the Question the *House* Resolved to send a Message to the Lords that they would Impeach the Lord *Strafford* of High Treason, and desired that he might be sequestred from Parliament and committed to Prison, and that they would in some convenient Time bring up particular Accusation and Articles against him.

Mr. *Pym* went up to the *House* of Lords the same Day, and impeached him accordingly.

The Message, delivered by Mr. *Pym* was in the following Manner.

“ My Lords, The Knights, Citizens, and
 “ Burgeses, now assembled in the *Commons*
 “ *House* of *Parliament*, have received Informa-
 “ tion of divers traiterous Designs and Practices
 “ of a great Peer of this *House*; and by Vir-
 “ tue of a Command from them, I do here in
 “ the Name of the *Commons* now assembled in
 “ *Parliament*, and in the Name of all the Com-
 “ mons of *England*, accuse *Thomas* Earl of
 “ *Strafford* Lord Lieutenant of *Ireland*, of
 “ High Treason. And they have commanded
 “ me further to desire your Lordships, that he
 “ may be sequestred from the *Parliament*, and
 “ forthwith committed to Prison. They fur-
 “ ther

“ ther commanded me to let you know, that
 “ they will within a very few Days resort to
 “ you.

The Earl being required to withdraw, it was debated by the Peers, whether he shou'd be imprison'd upon a general Accusation, without any particular Act of Treason charged against him or not? But upon the Question it was carried in the Affirmative, and he being called in, kneeled at the Bar, and after standing up, the Lord-keeper made the following Speech to him.

“ My *Lord of Strafford*, The *House of Com-*
 “ *mons* in their own Name, and the Name of
 “ the whole Commons of *England*, have this
 “ Day accused your Lordship to the Lords of
 “ the Higher House of *Parliament* of High
 “ Treason, the Articles they will in few Days
 “ Produce; in the mean time they have de-
 “ fired of my Lords, and my Lords have ac-
 “ cordingly resolved; that your Lordship shall
 “ be committed into safe Custody to the Gen-
 “ tleman-Usher, and be sequestred from the
 “ House, till your Lordship shall clear your-
 “ self of the Accusations that shall be laid
 “ against you. And thereupon he was imme-
 “ diately taken into Custody by *James Maxwell*
 “ Usher of the *Black Rod*.

After an Intermission of a few Days, the House resumed the main Matter on *Thursday November* the 12th 1640.

This Day the Debate began concerning Sir *George Ratcliff*, an Intimate of the Earl's when
 Lord

Lord Lieutenant of *Ireland*, in whom he reposed great Trust and Confidence, and by the Discourse as if he were guilty of High Treason, in endeavouring to subvert the Fundamental Laws, and that he did join with the Earl to bring in an Army from *Ireland* into this Kingdom. But he being a Member of the *Parliament* then sitting in *Ireland*, it was referred to a *Committee* to Consider what Method to take to bring Sir George Ratcliffe before the *House*. The next Day the *House* Resolved that Sir George Ratcliffe shou'd be forthwith sent for to Answer the Information charged against him *here* of High Treason.

The *House* then Ordered, That the *Committee* for preparing the Charge against the Earl of *Strafford*, being now *sine die*, meet this Day in the Treasury Chamber, to which *Committee* they gave Power to receive all such Petitions and Papers, as may conduce to the Business; and likewise a Power to send for Records, Papers, Parties, and Witnesses, or any other *Thing* that they shall think may conduce to the perfecting that Charge.

Upon this last Order there were many Reflections made upon the Words *any other thing*, as if that cautious Insertion were needless and ridiculous.

On *Wednesday* the Eighteenth of the same Month, the *House* Ordered that no Member of their *House* shou'd visit the Earl of *Strafford* during the time of his Restraint, without Licence first obtained from the *House*.

After

After Two Orders concerning the Manner of examining Witnesses, the Articles of the Impeachment were drawn up, and carried up by Mr. Pym to the Lords. Then the *Lords House* desired a Conference with the *Commons* by a *Committee* of Thirty of their *House*, touching the Examination of their Members in the Accusation of the Earl of *Strafford*, and on the first of *December* a Conference was agreed to by the *Commons*.

Friday the Eighteenth of *January* it was Ordered, That the *Committee* appointed to draw up the Charge against the Earl of *Strafford* shall desire to have the Depositions that are yet Sealed up delivered unto them, and may add and insert such particular Instances, and other Circumstances, as they in their Discretions shall think fit; to the several Articles delivered in Charge against the Earl of *Strafford*.

On *Saturday* a Message was sent to the *Lords* to this Effect by Mr. Pym.

To desire their Lordships that those Examinations which, at the Request of this *House* were taken in the Case of the Earl of *Strafford*, by the *Lords* deputed to that Purpose, may be delivered to the *Commissioners* of the *House* of *Commons* appointed to draw up the Charge against the Earl, that they may make use of them for the enlarging of their Charge, in Particularities of Evidence, according to the Clause of Resolution in the conclusion of the said Charge.

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The next material Passage was on *Thursday* the Eighteenth of *February*, when the *Lords* desired a Conference by a *Committee* of both *Houses*, concerning the sequestering *Thomas Earl of Strafford* from his Offices. Upon this Conference the *Lords* sent Word to the *Commons*: *First*, That they wou'd admit no further use of Council, than the Necessity of the Case for the Earl's just Defence required, and wherein Council may, with the Justice and Honour of the *House* be afforded him: *Secondly*, That there should be no delay in the Proceedings.

Some of these Resolutions and Orders, say our Historians, seemed harsh and strange, showing a Temper rather like that of Enemies, than fair Accusers, or impartial Judges.

However, on the Twenty Fourth the Earl delivered in his Answer to the Articles containing above Two Hundred Sheets of Paper; the Answer engrossed, and a Copy of it was delivered to the Reporters.

On *Friday* the Twenty Sixth of *February*, Ordered that the same *Committee* appointed to draw up the Charge against the *Earl of Strafford* formerly, with the addition of Mr. *Palmer*, Mr. *Selden*, Mr. *Whitlock*, and Mr. *Maynard*, do consider of the Articles and the further Impeachment of *Thomas Earl of Strafford* by the *Commons*; and likewise the said Earl's Answer to those Articles and further Impeachment.

It was observable, that the Four Lawyers that were added to the *Earl of Strafford's Committee*, made their Protestation of Secrecy openly in the *House*. And Sir *George Wentworth*

upon his Protestation made to the *House* to keep secret all such Matters as passed that Day, had leave to resort, to his Brother the Earl of *Strafford*; but all the other Members of the *House* were restrained from resorting to him, without leave first obtained.

The allowance of the Earl's Brother to Visit him, was reckoned a sort of Grace or Favour at that time, tho' his Obligations were such that it cou'd not have any Consequence of Service to the Earl.

Friday March the Fifth, Upon Mr. *Whitlock's* Report from the Earl of *Strafford's* Committee, it was Resolved upon the Question, that there shall be no *Replication* put into the Earl of *Strafford's* Answer in Writing, but that the further Proceedings shall be in the manner as is now proposed by the *Committee*.

Mr. *Whitlock* ordered to go up with this Message to the Lords.

That the *House of Commons* have considered of the Earl of *Strafford's* Answer, and do aver their Charge of High Treason against him, and that he is Guilty in such Manner and Form as he stands accused and impeached, and that this *House* will be ready to prove their Charge against him, at such convenient time as their Lordships shall prefix, and intend to manage the Evidence by Members of their own, and desire a free Conference with the Lords by select *Committees* of both *Houses* to consider of some Propositions and Circumstances concerning the Tryal.

This was agreed to by the *Lords* and 48 of the *Commons*, and 24 of the *Lords* were to make up this *Committee*.

This

This *Committee* was wholly taken up in the Settlement of the manner of the Tryal, and at last it was consented to thus. *First*, As to the Place it should be *Westminster-hall*, and the King to be made acquainted with it by the Lord Great Chamberlain. *Secondly*, For Persons, their Lordships agreed. That the *House of Commons* be present as a *Committee* of the whole *House* for this time, with the saving of the Right of the *Lords House*, either according to Law or Parliamentary Proceedings; and that this shall not be drawn into Precedent on either Side hereafter. For the Third. As to management of Evidence the Lords Grant. That if at any time during the Evidence, the Council for the Earl of *Strafford* shall interpose, when the Members of the *Commons* that are appointed to manage the Evidence, are speaking, they must of necessity desist, because it will not become them to plead against Council. For the Fourth agreed. For Council in managing and forcing of Evidence. The Council of the Earl of *Strafford* is not to speak, nor interrupt the Matter of the *House of Commons* 'til all the Evidence is finished, and the Council is not to stand at the Bar, but in some convenient Place where they may hear, and that they may speak for Matter of Law, but not for Matter of Fact, and that, not unless their Lordships shall see fitting.

Altho' every thing seemed now ready concerted for the Tryal, yet new Difficulties arose that retarded it for some time longer.

Upon *Saturday* the Twentieth of the same Month, The Earl of *Strafford* petitioned the *House*; That he might make use of some of the

Members of the *House*, nominated in his Petition, as Witnesses at his Tryal, and the *House* left the Members nominated in the said Petition to do as they should please, without giving any Offence to the *House*.

On *Monday* the Twenty first, The Earl appeared, but the Tryal did not then begin, only the Accusation that had been read before the Upper *House*, and the Earl's Replication was read, and not the Articles of Impeachment.

They were detained 'til the Tenth of *May* in making more preparatory Orders, the most material were these following.

That his Majesty may be moved. That the Committees for the Earl of *Strafford* may have the perusal of Sir *Edward Cook's Pleas* of the Crown.

That no Member of the *House* shall stand in the Place appointed for the Earl of *Strafford's Witnesses*, at the time of his Tryal, unless they be such as by the said Earl, are required to be there as Witnesses.

That no Member of the *House* confer with the Earl of *Strafford* during the time of the Tryal. There were Two Things very remarkable in these Proceedings; The first was, the Earl's Petition to make use of some Members of the *House* as Evidences for him, yet the *House* gave no direct Order that they should be obliged to attend, but left them at their Liberty to do as they pleased, only with a Profession that it should give them no Offence, and at the same time by another Order restrained any Members from conferring with him during the time of his Tryal. Which was certainly but a small Encouragement for any
whom

whom he should have occasion to make use of to appear in his behalf, or if they did, they could not do it so effectually, since there was no opportunity given of refreshing their Memories by a Verbal Conference, so that they must Answer on a sudden to any Question proposed, which Method of Restraint was justly accounted too Severe. But the Severity appeared still greater; since the *House* took a Liberty they wou'd not allow the Earl, for they themselves desired several both of the *House of Lords* and the *Commons* to be present as Evidences for them, and a Note of their Names was given to the Serjeant of *Arms*, with a particular Order to give notice to the Members of the *Lords* to be *present on all Occasions*.

These are the most material Passages 'til the *House* read and agreed to the Articles of High Treason against the Earl of *Strafford*, the Arguments used to prove him Guilty of the Contents of the *Bill* were long, and various, but the Judgment of a very Eminent *Lawyer* upon the whole is not to be omitted.

After the Earl's Charge was read, and an Introduction made by Mr. *Pym*, in which he called him the *Wicked Earl*, some Members of the *House of Commons*, according to their Parts assigned, being Lawyers applied and press'd the Evidence with great Licence and Sharpness of Language, and when the Earl had made his Defence, replied with the same Liberty upon whatsoever he said; taking all opportunities of bitterly inveighing against his Person: Which reproachful way of Carriage was look'd upon with so much Approbation, that one of the Managers (Mr. *Palmer*) lost all his Credit and

and Interest with them, and never recovered it, for using a Decency and Modesty, in his Carriage and Language towards him, though the weight of his Arguments press'd more upon the Earl than all the Noise of the rest.

The Tryal lasted Eighteen Days, in which all the hasty or proud Expressions, or Words, he had uttered at any time, since he was first made a Privy Counsellor; all the Acts of Passion or Power, that he had exercised in *Yorkshire*, from the time that he was first President there; his engaging himself in Projects in *Ireland*, as the sole making of Flax, and selling Tobacco in that Kingdom; his billeting of Soldiers, and exercising Martial Law there; his extraordinary way of Proceeding against the Lord *Mountnorris*, and the Lord Chancellor *Loftus*; his assuming a Power of Judicature at the Council Table, to determine private Interests, and Matters of Inheritance; some rigorous and extrajudicial Determinations in Cases of Plantations; some high Discourses at the Council Table in *Ireland*; some casual and light Discourses at his own Table, and at publick Meetings; and lastly some Words spoken in secret Council in this Kingdom, after the Dissolution of the last Parliament, were urged and pressed against him, to make good the general Charge, of an Endeavour to overthrow the Fundamental Government of the Kingdom, and to introduce Arbitrary Power.

The Earl behaved himself with great shew of Humility and Submission, but yet, with such a kind of Courage, as would lose no Advantage, and in Truth made his Defence with all imaginable

nable Dexterity, answering This Charge, and evading That, with all possible Skill and Eloquence, and though he knew not 'til he came to the Bar, upon what Parts of his Charge they would Proceed against him, or what Evidence they would produce, he took very little time to recollect himself, and left nothing unsav'd that might make for his own justification.

Thus far this Noble Historian ; who after he has recited the particular Heads of his Defence, comes at last to the Point on which the Fate of the Earl turned, and by which alone it was possible by a fair, judicial way, or the force of any known Law to condemn him. He represents that Matter thus.

That which was with most Solemnity and Expectation, urged against the Earl, as the Hinge upon which the Treason was principally to hang, was a Discourse of the Earl's in the *Committee of State* (which they called the *Cabinet Council*) upon the Dissolution of the former *Parliament*. Sir *Harry Vane*, the Secretary of State gave in Evidence, " That the King at that time calling
 " that *Committee* to him, ask'd them, since he
 " failed of the Assistance and Supply expected by
 " Subsidies, what Course he shou'd now take ?
 " That the Earl of *Strafford* answered, Sir, you
 " have now done your Duty, and your Subjects
 " have failed in theirs ; and therefore you are
 " absolv'd from the Rules of Government, and
 " may supply yourself by extraordinary ways ;
 " You must prosecute the War vigorously, You
 " have an Army in *Ireland*, with which you
 " may reduce this Kingdom.

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The Earl of *Northumberland* being examined for the Confirmation of this Proof, remembered only, " That the Earl had said you have done your
 " Duty, and are now absolved from the Rules of
 " Government ; but not a Word of the Army in
 " *Ireland*, or reducing this Kingdom. The Lord
 " Marquiss *Hamilton*, the Lord Bishop of *London*,
 " and the Lord *Cottingham* being likewise examined, answer'd upon their Oaths, that they
 " heard none of those Words spoken by the Earl. These were the only Persons present at that Debate, save only the *Archbishop* of *Canterbury*, and Secretary *Windedbank*, neither of which could be examined, or would be believed.

The Earl positively denied the Words; alledged much Animosity to be in Sir *Harry Vane* towards him, and observed, that not one of the other Witnesses, who were likewise present, and as like to Remember what was spoken, as the Secretary, heard one Word of the *Irish* Army, or reducing the Kingdom : " That if he had spoken these
 " Words, it could not be understood to be spoken
 " of *England*, but *Scotland*, of which the Dis-
 " course was, and for which that Army was
 " known to be raised. He concluded, that if the
 " Words were spoken by him, which he expressly
 " denied, they were not *Treason* ; and if they
 " were *Treason*, that by a *Statute* made in *Edward VI's*. time, one Witness was not sufficient
 " to prove it, and that there was but one.

Seventeen Days being spent in the whole Progress of the Tryal ; The Earl defended himself with wonderful Dexterity and Ability, concluded
 " that if the whole Charge (in which he hoped
 " he

“ he had given their Lordship Satisfaction of his
 “ Loyalty and Integrity, how great soever his
 “ Infirmities were) was proved, that the whole
 “ made him not Guilty of High Treason ; and
 “ to that purpose desired that his Learned Coun-
 “ cil might be heard, and most pathetically con-
 “ jured their Lordships, that for their own sakes,
 “ they would not out of Displeasure or Disfavour
 “ to his Person, create a Precedent to the Preju-
 “ dice of the *Peerage of England*, and Wound
 “ themselves thro’ his Sides. Which was good
 Council ; and has been since (tho’ too late) ac-
 knowledged to be so.

The next Day his Council was heard in the
 same Place to the Matter of Law. And here I
 cannot pass by an Instance of as great Animosity,
 and indirect Prosecution, in that Circumstance of
 assigning him Council as can be given. After the
House of Peers had assigned him such Council as
 he desired, to assist him in Matter of Law, (which
 never was, or can justly be denied to the most
 scandalous Felon, the most inhuman Murderer,
 or most infamous Traitor,) the *House of Commons*
 took notice of it with Passion and Dislike, some-
 what unskilfully, that such a thing should be
 done without their Consent ; which was no more,
 than that the Judge should be directed by the Pro-
 secutor, in what manner to proceed and deter-
 mine : Others with much Bitterness, “ inveigh-
 “ ing against the Presumption of those Lawyers
 “ that durst be of a Council with a Person accu-
 “ sed by them of *High Treason* ; and moving, that
 “ they might be sent for, and Proceeded against
 “ for that Contempt. Whereas they were not
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only obliged to it by the Honour and Duty of their Profession ; but had been punishable for refusing to submit to the *Lords Orders*. The Matter was too gross to receive any publick Order, and so the Debate ended ; but served (and no doubt that was the Intention) to let those Gentlemen know how warily they were to demean themselves, least the Anger of that terrible Congregation should be kindled against them.

But truly I have not heard that it made any Impression upon those Persons ; it did not I am sure upon Mr. *Lane* who argued the Matter of Law for the Earl. The Matters which were by him principally insisted upon, and Averr'd with such Confidence as a Man uses who believes himself, were these.

“ *First*, That by the Wisdom and Tenderneſs
 “ of Parliaments, which know that there could
 “ not be a greater Snare for the Subject, than to
 “ leave the Nature of Treason undefined, and un-
 “ limited, all Treasons were particularly men-
 “ tion'd and ſet down in the *Statute* of the 25th
 “ *Edward III. de Proditionibus*. That nothing
 “ is Treason, but what is comprehended within
 “ that *Statute* ; all Treasons before that *Statute*,
 “ as killing the King's Uncle, his Nurse, Piracy,
 “ and divers others being restrained and taken
 “ away by the Declaration of that Act. And that
 “ no Words, or Actions, in any of the Articles
 “ of the Earl of *Strafford's* Charge did amount to
 “ Treason within that *Statute*.

“ *Second*, That by Reason of the Clause in that
 “ *Statute* of declaring Treason in Parliament,
 “ divers Actions were declared to be Treasons in

“ *Par-*

“ *liament*, in the time of King *Richard II.* to the
 “ great Prejudice of the Subject : It was therefore
 “ specially provided, and enacted, by a *Statute*
 “ in the first Year of the Reign of King *Henry IV.*
 “ Chapter *10th*, which is still in Force, That
 “ nothing should be declared and adjudged Treason,
 “ but what was Ordained in that *Statute* of
 “ the *25th* of *Edward III.* by which *Statute* all
 “ Power of declaring New Treasons in *Parliament*
 “ was taken away ; and that no Precedent
 “ of any such Declaration in *Parliament* can be
 “ shewn, since that time : All New Treasons ;
 “ made by an Act of *Parliament* in the Reign of
 “ *Henry VIII.* being by the *Statute* of the first
 “ Year of Queen *Mary*, Chapter first, taken away
 “ and restrained to the *25th* of *Edward III.* and
 “ that likewise by another *Statute* of the first
 “ Year of Queen *Mary*, Chapter Tenth, all Tryals
 “ of Treasons ought to be according to the Rules
 “ of Common Law, and not otherwise.

“ *Third*, That the Foundation upon which the
 “ Impeachment was framed was Erroneous ; for
 “ that (besides that it was confessed on all Hands
 “ the Laws of the Kingdom were not subverted)
 “ an Endeavour to subvert the Fundamental *Laws*
 “ and *Statutes* of the Realm, by Force attempted,
 “ is not Treason, being only made Felony
 “ by the *Statute* of the first Year of Queen *Mary*,
 “ Chapter the Twelfth, which is likewise expired.
 “ That Cardinal *Woolsey*, in the Thirty
 “ Third Year of King *Henry VIII.* was indicted
 “ only of a *Premunire*, for an Endeavour to bring
 “ in the Imperial Laws into this Kingdom. And
 “ that an Endeavour, or Intention to levy War,

“ was made Treason, only by a *Statute* of the
 “ 13th of *Elizabeth* (a time very Inquisitive for
 “ Treason) which expired with her Life.

“ *Lastly*, That if any thing was alledged a-
 “ gainst the Earl which might be penal to him,
 “ it was not sufficiently and legally proved; for
 “ that by the *Statute* of the first Year of King
 “ *Edward VI.* Chapter the Twelfth, no Man
 “ ought to be arraigned, indicted, or condemned,
 “ of any Treason, unless it be upon the Testimony
 “ of Two lawful and sufficient Witnesses, produ-
 “ ced in the presence of the Party accused, unless
 “ the Party confess the same. And if it be for
 “ Words, within Three Months after the same
 “ spoken, if the Party be within the Kingdom.
 “ Whereas there was in this Case only one Wit-
 “ ness, Sir *Henry Vane*, and the Words spoken
 “ Six Months before.

The Case being thus stated on the Earl's be-
 half, the Judgment of the *Lords*, in whom the
 sole Power of Judicature was conceived to be,
 was by all Men expected; the *House of Commons*
 having declared “ that they intended to make no
 “ reply to the Argument of Law made by Mr.
 “ *Lane*, it being below their Dignity to contend
 “ with a private Lawyer.

Indeed they had a more convincing way to
 proceed by; for the next day after that Argu-
 ment, Sir *Arthur Haslerig* (Brother in Law to
 the Lord *Brook*) an absurd, bold Man, brought
 up by Mr. *Pym*, and so employ'd by that Party
 to make any attempt, preferr'd a Bill in the *House*
 of *Commons*, for the Attainder of the Earl of
Strafford of High Treason: It being observed,
 that

that by what the Earl had said for himself in the Matter of Fact, and in Matter of Prudence, of the Consequence of such an extraordinary Proceeding; and by what had been said for him in the point of Law; most sober Men, who had been, and still were, full enough of Dislike, and Passion against the Earl, were not at all satisfied in the *Justice* of the *Impeachment*, or in the manner of the Prosecution: And therefore, that the *House of Peers*, which consisted of near one Hundred and Twenty, besides the Bishops, and of whom Four-score had been constantly attending the Tryal, were not like to take upon them the Burthen of such a Judgment as was expected.

The Bill was received with wonderful alacrity, and immediately read the first and second time, and so Committed: Which was not usual in Parliaments, except in Matters of great Concernment in the particular, or of little Importance, or Moment in the general. Those who at first consented, upon slight Information, to his Impeachment, upon no other Reason but (as has been said before) because *they were only to Accuse*, and the *Lords* to *Judge*, and so thought to be troubled no more with it, being now as ready to Judge, as they had been to Accuse, finding some new Reasons to satisfy themselves, of which one was, "They had gone too far to sit still, or retire.

A Day or two before the Bill of Attainder was brought into the *House of Commons*, there was a very remarkable Passage, of which the Pretence was "to make one Witness with divers Circumstances

“stances as good as Two, tho’ I believe it was directed to an End very foreign to that which was proposed. The Words of the Earl of *Straford*, by which “his endeavour to alter the “Frame of the Government, and to levy War, should principally appear, were proved *singly* by Sir *Harry Vane*; which had been often averr’d and promised, should be proved by several Witnesses, and the Law was clear; “That less than “Two Witnesses ought not to be received in “Case of Treason.

To make this single Testimony appear as sufficient as if it had been confirmed by more, “Mr. “*Pym* informed the House of *Commons* of the “Grounds upon which the first advised that “Charge, and was satisfied that he should sufficiently prove it. That some Months before “the beginning of this Parliament, he had visited young Sir *Henry Vane*, eldest Son to the “Secretary, who was then newly recovered from “an *Ague*; that they being together, and condoling the sad Condition of the Kingdom, by “reason of the many illegal Taxes, and *Pressures*, Sir *Harry* told him if he would call upon him the next day, he would shew him “somewhat that would give him much trouble, “and inform him, what Councils were like to “be follow’d to the Ruin of the Kingdom; for “that he had, in perusal of some of his Father’s “Papers, accidentally met with the Result of “the Cabinet Council upon the Dissolution of “the last Parliament, which comprehended the “Resolutions then taken.

“The next day he shew’d me a little Paper of
“the

“ the Secretary’s own Writing; in which was
 “ contained the day of the Month, and the Re-
 “ sults of several Discourses made by several
 “ Counsellors, with several Hieroglyphicks,
 “ which sufficiently express’d the Persons by
 “ whom those Discourses were made. The Mat-
 “ ter was of so transcendent a Nature, and the
 “ Council so prodigious, with reference to the
 “ Common-wealth, that he desir’d he might take
 “ a Copy of it; which the young Gentleman
 “ wou’d by no means consent to, fearing it might
 “ prove prejudicial to his Father. But when
 “ Mr. *Pym* inform’d him, that it was of extreme
 “ consequence to the Kingdom, and that at a
 “ time might probably come, when the Discove-
 “ ry of this, might be a sovereign means to pre-
 “ serve both Church and State, he was contented
 “ that Mr. *Pym* should take a Copy of it, which
 “ he did, in the presence of Sir *Henry Vane*; and
 “ having examin’d it, together with him, deli-
 “ ver’d the Original again, to Sir *Henry*. That
 “ he had carefully kept this Copy by him, with-
 “ out communicating the same to any Body, ’till
 “ the beginning of this Parliament, which was
 “ the time he conceived fit to make use of it; and
 “ that then meeting with many other Instances
 “ of the Earl’s ill Disposition to the Kingdom, it
 “ satisfied him to move whatsoever he had moved,
 “ against that great Person. Having said thus
 much, he read the Paper in his Hand, in which the
 day of the Month was set down, and his Majesty
 to be present, and stating the Question to be
 “ what was now to be done? Since the Parlia-
 “ ment had refused to give Subsidies for the sup-
 “ ply of the War against *Scotland*. There

There were then Written, two *LL's* and a *t* over, and an *I* and an *r*, which was urged, “could signify nothing but *Lord Lieutenant of Ireland*, and the Words Written and applied to that Name were, Absolved from Rules of Government — Prosecute the War vigorously — An Army in *Ireland* to subdue this Kingdom — Which was urged, to comprehend the Matter of the Earl’s Speech and Advice. That Paper, by Fractions of Words (without mentioning any form’d Speech) containing only the Results of the several Counsellors Advice. Before those Letters which were ordered to signify the Lieutenant of *Ireland*, were an *A. B. C. G.* which might be understood to signify, *the Archbishop of Canterbury his Grace* ; and at those Letters some short sharp Expressions against *Parliaments*, and thereupon some Advice to the King. Next in the Paper, was an *M* with an *r* over, and an *Ho*, which were to be understood for Marquiss *Hamilton*, who was *Master of the Horse* ; and the Words annex’d thereunto seem’d to be rough, but without a Supplement signified nothing. Then there was an *L*, and *H*, and an *A*, which must be interpreted *Lord High Admiral*, which was the Earl of *Northumberland* ; and from that Hieroglyphick proceeded only a few Words, which implied Advice to the King, to be advised by his Parliament. Then there was *Ld. Cott.* (which would easily be believed to signify *the Lord Cottington*) with some Expressions as sharp, as those applied to the Lieutenant of *Ireland*.

When he had read the Paper he added ; “ That tho’ there was but one Witness directly in the Point,

" Point, Sir *Henry Vane* the Secretary, whose
 " Hand-writing that Paper was, whereof this
 " was a Copy ; yet he conceived those Circum-
 " stances of his, and young Sir *Henry Vane's*
 " having seen those original Results, and being
 " ready to Swear, that the Paper read by him
 " was a true Copy of the other, might reasona-
 " bly amount to the Validity of another Wit-
 " ness : And that it was no wonder that the o-
 " ther Persons mention'd in that Writing, who
 " had given as bad Counsel, would not remem-
 " ber, for their own States, what had passed in
 " that Conference ; and that the Earl of *Northum-*
 " *berland* who was the only good Counsellor in
 " the Pack, had remember'd some of the Words
 " of a high Nature, though he had forgotten
 " the other.

It is to be observed, that tho' this Evidence was
 not much insisted as of an equal force with a se-
 cond Witness, yet it sufficiently shows what weak
 insufficient things violent Men, when whetted
 with a Spirit of Revenge, and a Thirst of making
Sacrifices, will lay hold on to bring their purpo-
 ses to bear, so as even to work up Arguments which
 bring the very Cause they prosecute, under a dis-
 grace. Since in Cases of this Nature it always
 happens that every thing which is not a Proof of
 the Crime pretended, is thought to proceed from
 the Efforts of Malice which construes at its own
 Pleasure every Trifle into a Misdemeanour.

Upon the whole, what seems to be illegal in
 this Process, is the *Accumulation* of *Treason*, when
 every definit Article was not in it self *Treason*,
 yet the *whole conjunctly* was made *Treason* ; nei-

ther can the taking away of the *Bishops Votes*, and these of the *Lords* made since the *Accusation* be justified, and it was not therefore without some apprehension how far the *Managers* thought they should be obliged to proceed, when at the beginning they laid it down as a Rule, that their Proceedings should not be drawn into a Precedent.

This Consequence it had; that the *Bishops* who had indiscreetly parted with their *Votes* in one Case, soon were made sensible they must part with them in all Cases. Neither was there any distinction made in the Progress of the *Civil War* between a *new Lord* and an *old one*, the whole *House* being Voted useless by the *Commons*, and their Right of Judicature intermitted for a considerable Season, and so dangerous a thing it is, to give way to the least diminution of a *just Right* upon any Pretence, every Concession being only an Argument for Violence to extort more; and it is the Business of a wise Man not to consult for present Ease, but future Benefit. It would not be of any use to trace any other *Impeachments* during the time of the *Civil War*, since they were carried generally without Law, Order, or Warrant, sufficient, and so we shall descend to a more regular one of the Earl of *Clarendon*.

On *July* the 10th 1663, the Earl of *Bristol* exhibited Articles against the Earl of *Clarendon* of High Treason, and other Misdemeanours. Upon the Exhibition of these Articles, the Peers order'd a Copy of them to be deliver'd to the Lord Chief Justice, who was, with the rest of the Judges, to consider whether the Charge were regularly and legally brought, and whether there was any
Treason

Treason in it or no. The Judges met and delivered in the following Answer.

“ We conceive that a Charge of High Treason cannot by the Laws and Statutes of this Realm, be originally exhibited by one Peer against another unto the House of Peers; and that therefore a Charge of High Treason by the Earl of *Bristol* against the Lord Chancellor, mention'd in the Order of *Reference* to us of the 10th of this Instant *July*, has not been regularly and legally brought in; and if the Matters alledg'd in the said Charge were admitted to be true, altho' alledg'd to be traiterously done, yet there was no Treason in it.

Thus the Earl was acquitted of this Charge, which was only a prelude to a more severe one that follow'd after, and quite crush'd that great Minister. It was moved in the *House of Peers*, if it was not a legal Charge, it must be a Libel, and so ought to be condemn'd, and the Author of it censur'd. But the Earl of *Bristol*, to excuse himself, said he did not intend it as a Charge, but an Information.

Soon after the Storm fell heavier upon the Earl, for the *Commons* having first after his Disgrace address'd the King for vacating the *Canary Patent* procured by the Earl, fell upon Debates concerning Impeaching him. Sir *Edward Seymour* charged him *viva voce* with many Crimes, and a Committee was appointed to reduce the Accusation to the Heads, which was done, and reported by Sir *Thomas Littleton* on the 6th of *November*.

The Substance of them was,

His Design to raise a standing Army, and lay

aside all Parliament by his Advice to the King. His saying the King was a Papist. His pronouncing the *Canary* Patent, and other illegal Patents. His procuring and advising illegal Imprisonments of many of his Majesty's Subjects. His Farming the King's Customs at under Rates. His receiving great Sums of Money from the *Vintners* for freeing them from legal Payments. His unaccountable Acquisition of a great Estate. His advising and effecting the Sale of *Dunkirk*. His betraying the King and the Nation in foreign Treaties relating to the late War. His advising the fatal Division of the Fleet in 1666. With some other less momentous Articles.

Upon reading these Heads, the Question was put, "Whether the *House* had sufficient Judgment to Impeach. And it was carried in the Affirmative, and resolv'd to Impeach him of *Treason*, and *Crimes*, and *Misdemeanors*, Mr. *Seymour* carried up to the Lords, Impeaching according to Form, and *desiring their Lordships to sequester him from Parliaments and commit him to safe Custody, and that they wou'd in a convenient time exhibit Articles against him.*

The Lords refused to comply with the *Commons* in their desire of committing the Earl to safe Custody for this Reason, "Because the Accusation was only for Treason in general, without charging any thing in particular. The *Commons* ordered a Committee to bring Reasons for their Request, which with Precedents to enforce them were communicated to the Lords at a free Conference, but the Lords did not think them sufficient. Whereupon the *Commons* resolv'd that

Non-

Non-commitment of the Earl, " is an obstruction
 " to the Publick Justice of the Kingdom, and is
 " a Precedent of evil and dangerous Consequences.

The Earl thought fit to withdraw, leaving a Paper behind him in his Vindication, which the Commons ordered to be burnt by the common Hangman. They then desired the King to issue out a Proclamation for the Earl's Appearance, and taking his Tryal, but the Lords having sent down a Bill for his *Banishment*, that at last passed both Houses and received the Royal Assent.

In the Year 1678 the House of Commons resolved upon Impeaching the Earl of *Denby*. Articles were carried up on the 21st of *December* containing.

His traiterously encroaching to himself Regal Power, by treating of Matters of War and Peace with Foreign Princes, without communicating them to the Council. His endeavouring to Subvert the Constitution, and raising an Army. His hindring the meeting of the *parliament*, and thereby alienating the King's Affections from his Subjects. His Affection for Popery. His wasting the King's Revenue. His procuring illegal Grants to himself.

But the Parliament being dissolved the Matter rested 'til a New One was called. This *Parliament* continued the Resolution of the last, and sent a Message to the *Lords* to desire the Earl's Commitment, and Sequestration from *Parliament*. The *Lords* sent Word to them, that they Ordered a Bill to be brought in to Incapacitate the Earl of *Danby* for ever from all Offices, and coming into the King's Presence. But in the mean
 time

time the King granted a Pardon to the Earl under the Great Seal, the dangerous Consequence of which was represented to the King by Address of the *Commons*.

The *House* immediately passed a *Bill* for the *Attainder* of the Earl, and sent it up to the *Lords* by Sir Robert Peyton. The *Lords* desired a Conference upon the Subject of the *Bill*, to which they agreed with some Amendments. But the *Commons* disagreed to them, affirming, "That their Lordships Amendments had wholly altered the Nature of their *Bill*, and from a *Bill* of *Attainder* had converted it into a *Bill* of *Banishment*? However, after a Second and Third Conference the *Bill* passed, and the Earl surrendered himself, "praying that he should have Council assigned him, and should have Liberty to make use of Records, and that his Witnesses should be summoned? Upon which he withdrew, and by Order of the *House* was committed to the *Tower*.

On April the Twenty Fifth the Earl was brought from the *Tower* to the Bar of the *Lords House*, where he delivered in Writing his Plea, and Answer to the Articles of his Impeachment. Which being read, he withdrew.

The Earl's Plea was sent to the *Commons*, who appointed a *Committee* to Examine and Peruse the Nature of the Plea of the Earl of Danby, who reported. "That they found no Precedent of a Pardon granted to any Person impeached of High Treason, depending the Impeachment. And then Resolved, That a Message be sent to the *Lords* to desire their Lordships to Demand of the Earl of Danby; whether he will rely upon, and abide by the Plea of his Pardon? Accordingly the next Day the Earl was brought to the Bar, and the Question asked him by the Lord Chancellor, he craved time, and then said he would abide by his Pardon. But the *Commons* voted the Pardon Illegal and Void. The Earl was recommitted to the *Tower*, where he remained 'til

February

February 12, 1683. and then upon a Motion made, and the Opinion of the Judges being for it, he was bailed, the Dukes of *Somerset* and *Albermarle*, the Earls of *Oxford* and *Chesterfield*, his Sureties, 5000 l. a-piece upon Condition, that the Earl appeared in the *House of Lords* the next Sessions of *Parliament*, and not to depart without leave of that Court.

Thus this Case ended, tho' the Earl was again impeached some Years afterwards. On the Twenty Seventh of April 1695. The Earl of *Danby*, then Duke of *Leeds*, was impeached for *High Crimes* and *Misdemeanors*, he was heard in his Defence, both in the *House of Lords* and *Commons*. The Articles were. " For contracting and agreeing with the Merchants " trading to the *East-Indies*, or their Agents, for " 5500 Guineas to procure them a Charter of Con- " firmation, and a Charter of Regulation, or by his " Agents and Servants with his Privy and Con- " sent.

His Grace had a Copy of the Articles, and put in his Answer, the *Commons* order'd a Committee to make a Replication, and the *House of Lords* and the Duke, often calling upon the *Commons* to make their *Articles* good, which was delay'd under pretence of the absence of a material Witness; The Duke complain'd much of the Hardship of his Case, and moved for the Dismission of the Impeachment, which was not consented to, but were no more heard of 'till 1701. when they were dismissed with those of the *Four Impeached Lords*.

The next *Impeachments* which deserves Consideration were those of the *Four Lords* in the Year 1701.

Upon the first of April, Sir *John Leweson Gower*, and Others, came with a Message from the *House of Commons*, and at the Bar of the *House of Lords*, Impeached the Earl of *Portland* of *High Crimes* and *Misdemeanors*, acquainting the *Lords* at the same time, that they would in due time exhibit Articles against him and make good the same.

The

The *Lords* appointed a *Committee* to inspect their *Journals* concerning *Proceedings* of this Nature, and nothing more was done 'til the Fifteenth of the same Month. When the Lord *Sommers*, the Earl of *Oxford*, and the Lord *Hallifax*, were Impeached for *High Crimes* and *Misdemeanors*, the Impeachment of the first was brought up by Mr. *Harcourt*, the Second by Colonel *Bierly*, and the Third by Mr. *Bruges*. All which the *Commons* promised to make good in due time by an Exhibition of particular Articles.

The *House of Lords* the Day following out of a just Regard to their own Members, and the Privileges of their *House*, upon a Motion for the same, Ordered a *Committee* to draw up an Address to His Majesty, which was performed, *That he would be pleased not to pass any Censure upon the Four Noble Lords Impeached, until they are Tried upon the said Impeachments, and Judgment be given according to the Usage of Parliaments and the Laws of the Land.*

Thus the Matter slept 'til the Fifth of *May*, when the *Lords* sent a Message to the *Commons* to put them in Mind of the Impeachments brought up against the Four Lords, and that no particular Articles had as yet been Exhibited against them, which, after Impeachments have been so long depending, is due in Justice to the Persons concerned and agreeable to the Methods of *Parliament* in such Cases.

Four Days after the *Commons* sent up Colonel *Bierly*, with the Articles of Impeachment against the Earl of *Oxford*, who by the Command of the *House*, pray'd and demanded, that the Earl should give sufficient Security to abide the Judgment of the *House of Lords*.

A *Committee* was appointed to consider the manner of the Delivery of the Articles, and the Security demanded, and the Earl of *Stamford* Reported, That the *Committee* upon an Inspection of the *Journal* don't find any Mention of the *Commons* reading the Articles of the Bar, and as for giving Security they find none. So the Articles were read by the Clerk.

Thus

Thus the Articles against the Lords *Portland* and *Somers*, which in order of Time ought to have been first exhibited, were postponed, and in the issue no Articles at all brought up against the the Earl of *Portland*.

The Substance of the Articles against the *Earl of Orford* were; His procuring of Grants, and Reversions, and exorbitant Sums of Money, in *England* and *Ireland*, to the diminution of the Revenues of the Crown. His converting to his own Use Sums of Money issued out for the Service of the Navy, and procuring a Privy-Seal for a Discharge from accounting for the same, to the great detriment of the Navy. His disposal of Prize-Vessels without Condemnation, or judicial Proceeding. His procuring a Commission for *Captain Kidd*; and other Matters relating to the Navy. His neglect of the Fleet, and connivance at the *French*. His advising the Treaty of *Partition*.

The Articles being read, and a Copy being delivered to the *Earl*, he did upon the 4th of *May* deliver in his Answer to them, being a distinct and explicit Reply to every thing charged against him by the House of Commons; which Answer being read, and a Copy of it sent down to the Commons, the *Earl* pray'd that Mr. *Dodd* and Mr. *Pooley* might be assign'd Council for him upon his Tryal, which was agreed to, and ordered according to his Request.

The Lords upon sending down the *Earl's* Answer, put the Commons again in mind of exhibiting the Articles against the other impeached

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Lords,

Lords, which they said they were preparing, and would in a short time present to the House. This was performed by Mr. *Harcourt* in part, who brought up the Articles four Days after against the Lord *Somers*, renewing at the same time the demand of the Commons for a sufficient *Security* to abide Judgment.

These Articles contained in Substance, That the Lord *Somers* advised the *King* contrary to his Interest to the Partition Treaty, and set the Great Seal of *England* to the same. That he had transacted many other things relating to the said Treaty without a sufficient Warrant, or the Communication of it to the rest of the then Lord Justices of *England*. That he had ratified under the Great Seal a subsequent *Treaty* to that *Partition* of equal Detriment. That he did not enter and enroll, according to the Duty of his Office, the Articles of the said Treaties in the Court of *Chancery*. That he had procured Grants from the *King* for himself and others: That he assented to Captain *Kidd's* Commission. That he used divers unwarrantable Practices, as Lord High *Chancellor* of *England*, and made divers illegal and arbitrary Orders in Subversion of the Laws and Statutes of the Realm.

To these Articles drawn out into a great length, with many formal and aggravating Circumstances, the Lord *Somers* delivered in a full, and specific Answer on the 24th of the same Month.

The House of *Lords* in order to expedite the Proceedings depending before them, and prevent the
the

the interruption of Publick Business upon a research of Precedents, gave notice to the Commons that the Earl of *Orford* had desired a speedy Tryal. And by another Message renewed their Notices of the two other Impeachments depending, complaining of the Hardships of the noble Persons concerned by the delay of the Commons.

In answer to this Message, Mr. *Bromley* from the Commons acquainted the Lords, ‘ That in
 ‘ Answer to the Message, the Commons have
 ‘ prepared a Replication to the Earl of *Orford*’s
 ‘ Answer to the Articles of Impeachment of High
 ‘ Crimes and Misdemeanors exhibited against
 ‘ him, and at present defer bringing it up to their
 ‘ Lordships, because in the Tryals of the several
 ‘ Impeachments now depending, the Commons
 ‘ think it most proper, from the Nature of the
 ‘ Evidence that will be given at the said Tryals,
 ‘ to begin with the Tryal of the Impeachment of
 ‘ *John Lord Somers*, of High Crimes and Misdemeanors. And as to their Lordships other
 ‘ Message, the Commons take it to be without Precedent and Unparliamentary ; they, as Prosecutors, having a Liberty to exhibit their Articles of Impeachment in due time, of which
 ‘ they who are to prepare them are the proper
 ‘ Judges ; and therefore for their Lordships to
 ‘ assert, that having not yet exhibited particular
 ‘ Articles against *William Earl of Portland*, and
 ‘ *Charles Lord Halifax*, is a Hardship to them,
 ‘ and not agreeable to the usual Methods and
 ‘ Proceeding in Parliament in such Cases, does, as
 ‘ they conceive, tend to the Breach of that good

‘ Correspondence, betwixt the two Houses, which
 ‘ ought mutually to be preserved.

The House of Lords persisting in their Resolution for a speedy Tryal, sent word, ‘ That
 ‘ they had appointed the *ninth* of *June* for the
 ‘ Tryal of the *Earl* of *Orford* upon the Articles
 ‘ sent up against him, and that the Commons
 ‘ may reply if they think fit; reminding them
 ‘ once more of the remaining Impeachments.

In Answer, Mr. *Harcourt* brought the following Message from the Commons.

‘ That the Commons on Consideration of your
 ‘ Lordships Message to them on the 31st of *May*,
 ‘ concerning the *Earl* of *Orford* think it their
 ‘ undoubted Right, when several Persons stand
 ‘ impeached before your Lordships, to bring to
 ‘ Tryal such of them in the first place as the
 ‘ Commons apprehend, from the Nature of the
 ‘ Evidence, ought first to be proceeded against;
 ‘ to the intent all such Offenders may in due
 ‘ time be brought to Justice. And that no Day
 ‘ ought to be appointed by your Lordships for
 ‘ the Tryal of any Impeachment by the Commons, without some previous Signification to
 ‘ your Lordships from the Commons, of their
 ‘ being ready to proceed thereon.

‘ The Commons could not receive this Message from your Lordships without the greatest
 ‘ Surprize, your Lordships Proceedings in this
 ‘ Case being neither warranted by Precedents,
 ‘ nor (as the Commons conceive) consistent
 ‘ with the Methods of Justice, or with Reason;
 ‘ wherefore the Commons cannot agree to the
 ‘ Day

‘ Day appointed by your Lordships for the Try-
 ‘ al of the Earl of *Orford*.

‘ As to your Lordships Message at the same
 ‘ time relating to the Earl of *Portland*, and
 ‘ *Charles* Lord *Halifax*, the Commons take the
 ‘ same to be without Precedent, and Unparliamen-
 ‘ tary, and conceive your Lordships frequent Re-
 ‘ petition thereof, in so short a time, after the
 ‘ Commons had transmitted to your Lordships
 ‘ their Articles against two of the impeach’d
 ‘ Lords, and were daily preparing their Articles
 ‘ against the others, manifestly tends to the De-
 ‘ lay of Justice, in obstructing the Tryals of the
 ‘ impeached Lords, by introducing Disputes, in
 ‘ Breach of that good Correspondence between
 ‘ the two Houses which ought inviolably to be
 preserved.

The Lords kept still fixed to the Day ap-
 pointed for the Tryal of the Earl of *Orford*,
 and Orders were given by his Majesty to make
 Preparations for it in *Westminster Hall*. In the
 mean time upon a further Search of Precedents,
 they return’d Answer to the Commons in the
 following Manner.

‘ The Lords do think fit, upon Occasion of
 ‘ the Message of the Commons of the 31st of *May*,
 ‘ to acquaint that House, that having searched
 ‘ their own Journals they do not find, that after
 ‘ a general Impeachment there has ever been so
 ‘ long a Delay of bringing up the particular Ar-
 ‘ ticles of Impeachment, sitting the Parliament.
 ‘ And therefore the Lords do think, they had
 ‘ Reason to assert, that it was a Hardship to the
 ‘ two Lords concerned (especially after this
 ‘ House

' House had put the House of Commons in mind
 ' of exhibiring such Articles) and not agreeable
 ' to the usual Proceedings in Parliament. And as
 ' the Lords do not controvert what Right the
 ' Commons may have of Impeaching in general
 ' Terms, if they please; so the Lords, in whom
 ' the Judicature does intirely reside, think them-
 ' selves obliged to assert, That the Right of limi-
 ' ting a convenient time for bringing the particu-
 ' lar Charge before them, for the avoiding of
 ' Delay, in Justice, is lodged in them.

' The Lords hope the Commons, on their Part,
 ' will be as careful, not to do any thing that may
 ' tend to the Interruption of the good Correspon-
 ' dence between the two Houses, as the Lords
 ' shall ever be on their Part: And the best Way
 ' to preserve that is, for neither of the Two
 ' Houses to exceed those Limits which the Law
 ' and Custom of Parliament have already establish-
 ' ed.

Thus Matters stood as to the Difference be-
 tween the two Houses, 'till the sixth of *June*,
 when Mr. *St. John* from the Commons desired
 a Conference upon the Subject Matter of their
 last Message; this was granted, and Mr. *Harcourt*
 managed on the Part of the Commons in
 the following Manner.

' The Commons have desired this Conference
 ' upon your Lordships Message of the 4th of
 ' *June*, in Order to preserve a good Correspon-
 ' dence with your Lordships, which will al-
 ' ways be the Endeavour of the Commons, and
 ' is at this time particularly necessary, in Order
 ' to

' to bring the impeached Lords to a speedy Try-
 ' al. And because the Messages which your Lord-
 ' ships have thought fit to send to the Commons,
 ' and the Answers thereunto, seem not to tend
 ' towards Expediting the Tryals, which the
 ' Commons so much desire, but rather furnish
 ' Matter of Dispute between the two Houses;
 ' the Commons therefore chuse to follow the
 ' Methods formerly used with good Success upon
 ' the like Occasions; and for the more speedy
 ' and easie adjusting and preventing any Diffe-
 ' rences which have already happened, or may
 ' arise, previous to, or upon these Tryals, the
 ' Commons do propose to your Lordships, That
 ' a Committee of both Houses be nominated to
 ' consider of the most proper Way and Methods
 ' of proceeding on Impeachments, according to
 ' the Usage of Parliament.

The Lords then ordered a Committee to in-
 spect the Journals, to consider of the Manner
 of Proceedings upon Impeachments.

The Committee after Inspection of the Journals,
 finding but very short Dates between the Genera-
 lity of the Impeachments, and the Days of stand-
 ing Tryal, send another Message on the Ninth of
June to the Commons to this Effect.

' In Answer to the Message of the House of
 ' Commons of the fourth Instant, the Lords say
 ' by their Message on the Third, wherein they
 ' declare themselves ready to proceed to the Try-
 ' al of any of the Impeached Lords, whom the
 ' Commons should be first ready to begin with,
 ' they have given a full Proof of their Willing-
 ' ness

' nefs to comply with the Commons in any thing
 ' which may appear reasonable, in order to the
 ' speedy determining of the Impeachmentts now
 ' depending; and therefore (as the Lords conceive)
 ' the Commons had no Occasion to begin any Di-
 ' spute on that Head; so their Lordships are care-
 ' ful to decline entring into a Controversie, which
 ' seems to them to be of no use at present.

' The Lords think themselves obliged to assert
 ' their undoubted Right to appoint a Day for the
 ' Tryal of any Impeachment depending before
 ' them, if they see good Cause for it, without
 ' any previous Signification from the Commons of
 ' their being ready to proceed; which Right is war-
 ' ranted by many Precedents, as well as consonant
 ' to Justice, and Reason; and their Lordships,
 ' according to the Example of their Ancestors,
 ' will always use that Right, with a Regard to
 ' the equal and impartial Administration of Ju-
 ' stice, and with a due Care to prevent unrea-
 ' sonable Delays.

' This being the Case, the Lords cannot but
 ' wonder, that the Commons, without any Foun-
 ' dation for it, should make use of Expressions,
 ' which, as their Lordships conceive, have never
 ' been used before by one House of Parliament to
 ' another, and which, if the like were returned,
 ' must necessarily destroy all good Correspondence
 ' between the two Houses.

' The last Part of the Commons Message being
 ' in Effect a Repetition only of their former of
 ' the 31st of *May*, to which the Lords have al-
 ' ready returned a full Answer, their Lordships
 ' think

Pages 41 to 49 missing

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the Commons to renew the free Conference, and the next day by another Message informed them that they had appointed a Committee to state the matter of the Free Conference, and invited again the Commons to proceed immediately upon the Subject matter of the last in a present Free Conference. But the Commons resolved that it was not consistent with their Honour to renew the Conference until they had received Reparation by their Lordships doing Justice upon the Lord *Haversham* for the late Indignity offered to the House of Commons.

On the same Day Mr. *Bruges* carried up the Articles against *Charles Lord Halifax*, which were,

That he had obtain'd and got pass'd a Grant to *Thomas Railton Esq;* in Trust for himself, amounting to 13000*l.* out of the forfeited Estates in *Ireland*, accruing to his Majesty from Attainders, Outlawries, &c. That he had not repaid into the Exchequer in *Ireland* the Sum of 1000*l.* which he had actually received out of the Profits of the above-mentioned Grant, contrary to a late Act of Parliament. That in the Time of an expensive War, he not only advised the passing others, but obtained and accepted several beneficial ones for himself, which was a most notorious Abuse of his Majesty's Goodness. That he procured a Grant to his Brother *Christopher Mountague*, of the Place and Office of the Auditor of the Receipt and Writer of the Tallies, in Trust for himself; so that he the said Lord was in effect, at the same Time, one

of the Comissioners of the Treasury, Chancellor of the *Exchequer*, and Auditor of the Receipts; which Offices were manifestly inconsistent, and ought to have been a Check to each other. That he advised his Majesty to the Treaty of the *Partition* of the *Spanish* Monarchy.

To these Articles the Lord *Halifax* returned an ample and particular Answer: And in the mean Time the Lords sent a Message to the Commons of their having appointed *Tuesday* the 17th of *June*; and at the same Time communicated to them the Notes and Rules to be observed at the Tryal. But the Commons were still unsatisfied, and gave their Reasons the next Day, why they could not proceed to the Tryal of the Lord *Somers*. Mr. *Harcourt* delivered them thus:

‘ The Commons in this whole Proceeding
 ‘ against the impeached Lords, have acted with all
 ‘ imaginable Zeal to bring them to a speedy Tryal;
 ‘ and they doubt not but it will appear, by comparing their Proceedings with all others upon
 ‘ the like Occasions, that the House of Commons have nothing to blame themselves for,
 ‘ but that they have not expressed the *Resentments* their *Ancestors*. have justly shewed upon
 ‘ much less Attempts which have been made upon their Power of Impeachments.

‘ The Commons on the 31st of *May* acquainted your Lordships, that they thought it proper from the Nature of the Evidence, to proceed in the first Place upon the Tryal of the
 Lord

‘ Lord *Somers*: Upon the first Intimation some
 ‘ Days afterwards, That you would proceed to
 ‘ the Tryal of the impeached Lords, whom the
 ‘ Commons should be first ready to begin with,
 ‘ notwithstanding your Lordships had before
 ‘ thought fit which Impeachment should be first
 ‘ tried, and affix a Day for such Tryal without
 ‘ consulting the Commons, who are the Prose-
 ‘ cutors.

‘ The Commons determine to expedite the
 ‘ Tryals to the utmost of their Power, in Hopes
 ‘ of attaining that End; and for the more speedy
 ‘ and easie adjusting and preventing any Differen-
 ‘ ces which had happened, or might arise previ-
 ‘ ous to or upon these Tryals, proposed to your
 ‘ Lordships at a Conference, the most Parlia-
 ‘ mentary and effectual Method for that Pur-
 ‘ pose, and that which in no manner intrench’d
 ‘ upon your Lordships Judicature; That a
 ‘ Committee of both Houses should be nomi-
 ‘ nated, to consider of the most proper Way
 ‘ and Methods of proceeding upon Impeach-
 ‘ ments, according to the Usage of Parliament.

‘ In the next Message to the Commons upon
 ‘ *Monday* the 9th of *June*, your Lordships
 ‘ thought fit, without taking the least Notice of
 ‘ this Proposition, to appoint the *Friday* then
 ‘ following for the Tryal of the said Lord *Somers*;
 ‘ whereunto, as well as to many other Messages
 ‘ and Proceedings of your Lordships upon this
 ‘ Occasion, the House of Commons might have
 ‘ justly taken very great Exceptions; yet as an
 ‘ Evidence of their Moderation, and to shew

' their Readiness to bring the impeached Lords
 ' to speedy Justice, the Commons only insisted
 ' on their Proposition of a Committee of both
 ' Houses to settle and adjust the necessary Pre-
 ' liminaries to the Tryal; particularly, Whether
 ' the Impeached should appear on their Tryals
 ' at your Lordships Bar as Criminals? Whether
 ' being under Accusations of the same Crimes,
 ' they should sit as Judges on each others Tryal
 ' for those Crimes, or should vote in their own
 ' Cases, as is notorious they have been permit-
 ' ted by your Lordships to do, in many Instances
 ' which might be given; to which Particulars
 ' your Lordships have not yet given a direct
 ' Answer, though put in Mind thereof by the
 ' Commons.

' Your Lordships at a Conference having of-
 ' fered some Reasons why you could not agree
 ' to a Committee of both Houses to adjust the
 ' necessary Preliminaries, the Commons there-
 ' upon desired a Free Conference, and your
 ' Lordships agreed thereunto; at which 'tis
 ' well known to many of your Lordships, who
 ' were then present, what most scandalous Re-
 ' proaches and false Expressions, highly reflect-
 ' ing upon the Honour and Justice of the House
 ' of Commons, were uttered by *John Lord Ha-*
 ' *versham*, whereby the Commons were under
 ' a Necessity of withdrawing from the said Free
 ' Conference; for which Offence the Commons
 ' have, with all Regard to your Lordships, pray-
 ' ed your Lordships Justice against the Lord *Ha-*
 ' *versham*, but have as yet received no manner of
 ' Satisfaction.

‘ The

' The Commons restrain themselves from enu-
 ' merating your Lordships very many irregular
 ' and unparliamentary Proceedings upon this Oc-
 ' casion, but think it what they owe to publick
 ' Justice, and all the Commons of *England* whom
 ' they represent, to declare some few of those
 ' Reasons, why they peremptorily refuse to pro-
 ' ceed to the Tryal of the Lord *Somers* on the
 ' 17th of *June*.

' *First*, Because your Lordships have not yet
 ' agreed that a Committee of both Houses should
 ' be appointed for settling the necessary Prelimi-
 ' naries; a Method never until this time denied
 ' by the House of Lords, whensoever the Com-
 ' mons have thought it necessary to desire the
 ' same.

' *Secondly*, Should the Commons (which they
 ' never will do) be contented to give up those
 ' Rights which have been transmitted to them
 ' from their Ancestors, and are of absolute Ne-
 ' cessity to their Proceedings on Impeachments;
 ' yet whilst they have any Regard to Publick
 ' Justice, they never can appear as Prosecutors be-
 ' fore your Lordships, 'till your Lordships have
 ' first given them Satisfaction, that the Lords
 ' Impeached of the same Crimes shall not sit as
 ' Judges on each others Tryal for those Crimes.

' *Thirdly*, Because the Commons have as yet
 ' received no Reparation for the great Indignity
 ' offered to them at the Free Conference by the
 ' Lord *Haversham*, the Commons are far from any
 ' Inclination, and cannot be supposed to be under
 ' any Necessity of delaying the Tryal of the Lord

' *Somers*:

‘ *Somers*: There is not any Article exhibited
 ‘ by them in Maintenance of their Impeachment
 ‘ against the Lord *Somers*, for the Proof where-
 ‘ of they have not full and undeniable Evidence,
 ‘ which they will be ready to produce, as soon as
 ‘ your Lordships shall have done Justice upon the
 ‘ Lord *Haversham*; and the necessary Prelimi-
 ‘ naries in order to the said Tryal, shall be set-
 ‘ tled by a Committee of both Houses.

‘ The Commons think it necessary to observe
 ‘ to your Lordships, that most of the Articles
 ‘ whereof the Lord *Somers* stands impeached,
 ‘ will appear to your Lordships to be undoubted-
 ‘ ly true, from Matters of Record, as well as by
 ‘ the Confession of the said Lord *Somers*, in his
 ‘ Answer to the said Articles; to which the Com-
 ‘ mons doubt not but your Lordships will have
 ‘ a due Regard, when his Tryal shall regularly
 ‘ proceed.

The Lords sent their Answer to this Message,
 on *Friday, June 20*, in these Words.

‘ The Lords in Answer to the Message of the
 ‘ Commons of the 17th Instant, say, The only
 ‘ true Way of determining which of the two Houses
 ‘ has acted with the greatest Sincerity, in Order
 ‘ to bring the Impeached Lords to their Tryals,
 ‘ is to look back upon their respective Proceed-
 ‘ ings.

‘ The Lords do not well understand what the
 ‘ Commons mean by that *Resentment* which
 ‘ they speak of in their Message: Their Lord-
 ‘ ships own the House of Commons have a Right
 ‘ of impeaching: And the Lords have undoubted
 ‘ Power

‘ Power of doing Justice upon those Impeachments, by bringing them to Tryal, and condemning or acquitting the Parties in a reasonable time. This Power is derived to them from their Ancestors, which they will not suffer to be wrested from them by any Pretences whatsoever.

‘ Their Lordships cannot but wonder that the Commons should not have proposed a Committee of both Houses much sooner, if they thought it so necessary for the bringing on the Tryals; no Mention being made of such a Committee from the first of *April* to the sixth of *June*, although during that Interval their Delays were frequently complained of by the House of Lords.

‘ The Manner in which the Commons demand this Committee, the Lords look upon as a direct invading their Judicature; and therefore as there never was a Committee of both Houses yielded to by the Lords in case of any Impeachment for High Crimes and Misdemeanors; so their Lordships do insist, that they will make no Precedent upon this Occasion. Many Impeachments for Misdemeanors have in all Times been determined without such a Committee: And if now the Commons think fit, by an unprecedented Demand, to form an Excuse for not prosecuting their Impeachments, it is demonstrable where the Obstruction lies.

‘ As to the Preliminaries which the Commons mention in particular, as proper to be settled at such a Committee, they have received the Resolution of the House of Lords therein by their
‘ Message

‘ Message of the 12th Instant, from which (being Matters entirely relating to their Judicature) their Lordships cannot depart.

‘ As to the last Pretence the Commons would make to shelter the delaying of the Tryals, from some Expressions which fell from the Lord *Haversham* at the free Conference, at which Offence was taken, their Lordships will only observe :

‘ *First*, That they have omitted nothing which might give the Commons all reasonable Satisfaction, of their Purpose to do them Justice in that Matter, so far as is consistent with doing Justice to that Lord; and also preserve all good Correspondence with them; as appears by the several Steps they have taken.

‘ *Secondly*, That this Business has no Relation to the Tryal of the Impeached Lords, and therefore their Lordships cannot imagine why the Commons should make Satisfaction and Reparation against the Lord *Haversham*, a necessary Condition for the going on with the Tryals, and at the same time find no Difficulties in proceeding on other Business.

The Lords however proceeded to the Tryal of the Lord *Somers* on the Day appointed; the Commons not appearing, he was acquitted, and the Impeachment dismissed. Whereupon the Commons made the following Remonstrance.

‘ That the Lords have refused Justice to the Commons upon the Impeachment against the Lord *Somers*, by denying them a Committee of both Houses which was desired by the Commons

' as the proper and only Method of settling
 ' the necessary Preliminaries, in order to the
 ' proceeding to the Tryal of the said Lord *Somers*,
 ' to effect; and afterwards by proceeding to
 ' a pretended Tryal of the said Lord, which
 ' could tend only to protect him from Justice by
 ' Colour of an illegal Acquittal. Against which
 ' Proceeding of the Lords, the Commons do so-
 ' lemnly protest, as being repugnant to the Rules
 ' of Justice, and therefore null and void. That
 ' the House of Lords, by the pretended Tryal of
 ' *John* Lord *Somers*, have endeavour'd to o-
 ' verturn the Right of Impeachments lodg'd in
 ' the House of Commons by the ancient Consti-
 ' tution of this Kingdom, for the Safety and Pro-
 ' tection of the Commons against the Power of
 ' great Men; and have made an Invasion upon
 ' the Liberties of the Subject, by laying a Foun-
 ' dation of Impunity to the greatest Offenders.
 ' That all the ill Consequences which may at
 ' this time attend the Delay of the Supplies gi-
 ' ven by the Commons, for preserving the Pu-
 ' blick Peace, and maintaining the Ballance of
 ' *Europe*, by supporting our Allies against the
 ' Power of *France*, are to be imputed to those
 ' who to procure an Indemnity for their own
 ' enormous Crimes, have used their utmost
 ' Endeavours to make a Breach between the
 ' two Houses.

The Lords upon this gave Notice to the Com-
 mons that they had dismissed the Lord *Somers's*
 Impeachment, and would proceed upon the Lord
Orford's the *Monday* following. Upon which
 H the

the Commons ordered, ' That no Member should
' presume to appear on *Monday* next, at the pre-
' tended Tryal of the Earl of *Orford*, upon Pain
' of incurring the utmost Displeasure of the House.

The Lords proceeded in the same Manner, dismissing all the Impeachments, and acquitting the impeached Lords, not without some sharp Votes against the Commons.

What was most remarkable in these Proceedings was, That all the Lords who put in their Answers to the Articles, denied the *Advising* or *Promoting* the *Partition Treaty*.

To which we shall add a Remark of the *Learned Doctor Kenner's* upon the whole Conduct of this Affair.

That his Majesty could not but be very uneasy at this severe Dealing with his Councils and his Ministers; when he knew the Error, if any, was a Mistake of Judgement only, and that rather of his own, than of any employed by him.

P. S.

THERE being something material in the Tryal of the Lord *Preston*, 1690, tho' it does not strictly come within the Title of my Design, I have thought fit to add a few Passages of it, especially since the Matter of *Corresponding* with *Enemies*, and the Force and Validity of a Man's *Hand-writing* in Point of Evidence, is determined here by Law; which may show how far

far Crimes of the like Nature may meet with the same Condemnation.

The Indictment was for a Correspondence with *France*, and the late King *James*, contrary to the known Laws of the Land, for endeavouring to go to *France*, in order to compleat and finish some Schemes against the Government, which were contained in several traiterous Papers found upon him when apprehended.

The Proofs were plain, first of hiring a Boat to go to *France*, and giving Rewards to conceal the real Design by a Pretence of being bound to *Flanders*; all sufficiently attested upon Oath by the Master of the Vessel, and other Evidences,

Captain *Billop*, who was the Person who seiz'd the Lord *Preston*, with others in their Voyage, gave an Account that according to his Commission, he overtook them at *Gravesend*; that he searched the Lord *Preston*, and took away some Papers from him, as also Mr. *Ashton*, one of his Lordship's Companions, and took away more Papers with a Piece of Lead fix'd to them. That the Prisoner used several Arguments with him to gain the Papers out of his Power, but that he was obstinate to all his Importunities.

That he brought the Pacquet to my Lord *Nottingham*, whom he saw read part of them, and from thence to my Lord President of the Council. The Earl of *Nottingham*, the Marquess of *Camarthen*, and the Lord *Sidney* swore to their respective Reading and Marking the Papers, which Marks were owned by them in Court; but Cap-

tain *Billop* only marking the Papers he read could attest no more; at which the Lord *Pres-
ton* made some frivolous Exceptions The Papers were read, the first whereof being very remarkable and bearing some Similitude perhaps to latter Cabals, we shall insert at Length.

‘ The Result of a Conference between some
‘ Lords and Gentlemen, both *Tories* and *Whiggs*,
‘ in which it was undertaken to prove the Possi-
‘ bility and Method of restoring, by a *Fre* Power,
‘ without endangering the Protestant Religion, and
‘ Civil Administration, according to the Laws
‘ of this Kingdom.

1. *F.* must either oblige or conquer us: If the last, he will find few Helps here, but a bloodier Resistance than ever the *Romans*, *Saxons*, or *Normans* found, it being incredible how unanimous and obstinate that very Thought renders the People; so that it may make us a Heap of Ruin, but no Nation that can ever help or import any thing to *F.*

2. If *K. L.* desire to oblige us, and make the Work easie, that he may be at Leisure to ply the *Empire* or *Italy*, or to have an *Advantageous Peace*, he must take off the frightful Character we have of him, and shew us he has no such Design, as returning our offended *K.* a Conqueror upon us; but that he can, and will be our Friend and Mediator; upon which Terms he will find that many Lords and Gentlemen will speedily shew themselves to his Satis-
tis-

tisfaction; especially if he makes haste, and loses no approaching Opportunity.

3. If he incline to this sort of Sense, he must over-rule the Bigotry of *St. G.* and dispose their Minds to think of those Methods that are more likely to gain the Nation; for there is one silly thing or other daily done there that comes to our Notice here, which prolongs what they so passionately desire. The Methods thought upon are these;

First, To prevent dangerous and foolish Intelligence, by forbidding all in that Court to write any News hither; and that *K. 7.* only have his Correspondents by whom to hear from and speak to People here; since Letters so often miscarry, and are filled with nothing but what we should not hear; and what we have are Arguments for the most part against the *K's* Restoration.

Secondly, Since there is a great Body of Protestants that never defected; and that many Thousands are returning; and that they are the natural Weight and Power of these Kingdoms, by the having the Heads, Hands, and Wealth of their Side, to the Odds and Advantage of at least two hundred Protestants to one Catholick; the *K.* may think of nothing short of a Protestant Administration, nor of nothing more for the Catholicks than a legal Liberty of Conscience; for much *e mutt* is against all other Notions, to which all private Passions and artificial Frames in Government must yield or break. He may
reign

reign a Catholick in Devotion, but he must reign a Protestant in Government. *Cromwell* could not, yet on a broader Bottom, with a victorious Army, subsist or keep what he had got:

Thirdly, He must give us a Model of this at *St. G.* by preferring the Protestants that are with him above the Catholicks; one being loyal upon less Ties of Interest, and to tell the Nation here what they are to hope for when he comes.

Fourthly, He must give Encouragement to Lords and Gentlemen here to come to him, at least Seven or Nine for standing Council; which will make us here think he is in some Degree ours again, and that we have a Relation to him, and some Interest and Share in him by the Men of Quality of our own Religion that are with him. This will incomparably facilitate the Matter here; nor will they when they come, come empty and in their own Names, which is still better, and will be more satisfactory here.

Fifthly, To induce this, *English* Protestants should be encouraged by an Edict of Liberty from the K. of F. to have Chappels at their own Costs, in which to worship God after their respective ways; by which that K. will make us reflect upon his Conduct towards the *Hugonots* rather to flow from the Hazard he thought himself in by their *Antinomian* and Resisting Principles, than a Desire of Persecution.

Lastly, All other requisite Measures depending upon the Acceptance this finds, an Answer hereunto is impatiently desired by those that have dis-

discourſed the *K's* Buſineſs to this Maturity. So ended with an unanimous Conſent, both *Tories* and *Whiggs*, upon this Occaſion, that are in a way of cloſing in his Intereſt.

Then another Paper was read, being the ſame with this; only in the firſt Blank there was written *K. J.* in the firſt Paragraph (*France*) twice, in the Third Paragraph (*St. Germains*) in the Fifth (*Mathemat. for Much e Mutt.*) the reſt are plain and obvious, and need not be ſupplied. The Lord *Preſton* ſaid he never ſaw theſe Papers in his Life.

There were nineteen other Papers more read and atteſted as taken from him. Then Mr. *Bland*, Mr. *Townſend* and Mr. *Warr* (who were acquainted with my Lord's Hand) ſwore that they believed the *Three* laſt Papers to be the Lord *Preſton's* Hand.

My Lord in his Defence ſaid, That the Treason was not proved to be done in *Middleſex*, as it was laid in the Indictment; nor that the Papers were ſufficiently proved to be his, Similitude of Hands being no Proof.

To which the Court reply'd, That his taking Boat in *Middleſex*, at *Surrey-Stairs*, was an Overt-Act of the Treason, and whether that Act had been proved, muſt be left to the *Jury*.

The Lord Chief-Juſtice *Holt* ſumm'd up the Evidence; and then the Lord *Preſton*, (tho' out of Courſe) having Leave, obſerved to the Jury, how that he was a Proteſtant of the Church of *England*, that he hoped this Proof could amount

mount to no more than a *Presumption*, that his Design of going beyond Sea, was only to be quiet, he having been imprison'd here.

The Court reply'd, That he was took up only in Times of Danger, and that he had shewed his Dissatisfaction with the present Government, and that was to be left to the Jury to consider, if any one can design innocently to go into *France*, (a known, declared Enemy's Country, at open War with the Government) with such Papers, and in such Manner.

Then the Jury withdrew for half an Hour, and brought the Prisoner in *Guilty*. Upon which the Lord Chief Justice *Pollexfen* told them;
 ' That he thought they had done according to
 ' their Evidence; and tho' it were a hard Case
 ' upon particular Persons that had brought
 ' themselves into those Inconveniencies; yet it
 ' was necessary that Justice should have its Course,
 ' or else there would be no longer living for any
 ' Man, in any Society or Government.

THE
CONCLUSION.

FROM reflecting upon the Course of these Impeachments, the following Observations seem naturally to arise.

That Impeachments are in themselves proper and necessary Checks to arbitrary Ministers; that they are the only Resort very often that can be left open for honest Men to interpose in preventing the Ruin of their Country, and hindring the Prerogative of the Crown from proving fatal to it self. Thus in the Case of the Earl of *Strafford*, the King
l him;

himself, tho' he could not give into the Proofs of his being guilty of High-Treason, yet owns him a Person *dangerous* to be employ'd, which he could never have known, but from the Evidence produced at his *Trial*.

That Impeachments never call any Censure upon the Impeachers, but when they are carried on with Passion, Violence, and Personal Resentments, and that this way of Proceeding destroys the very End of Publick Justice. That there was not a little of this mixed in the Case of the Earl of *Strafford*, and that of the four Lords in King *William's* Time.

That almost in every considerable and legal Impeachment since *Charles* the First, The giving *evil Advice* to the Prince has been the Foundation of the Accusations, and that has bore hardest upon the Persons accused. That it has been the constant Judgment of Parliaments, that the Royal Authority is not a sufficient Skreen from Publick Justice, and that all Appeals to that have been reckoned the highest Abuse of the Prerogative; as in the Case of the *Earl of Danby*, and others.

That the Differences which have happened between the two Houses of Parliament in the Course of Impeachments, have proceeded more from the Temper of some leading Men on each Side, than the

the Nature of Impeachments themselves, which are capable of being carried on with Ease and Tranquility; and that therefore these Differences are no Discouragements to a just and well grounded Impeachment.

F I N I S.

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